

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,) 2:04-CR-618
)
Plaintiff) Charleston,
) South Carolina
VS) September 21, 2010
)
ARMOND WRIGHT,)
)
Defendant)

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE P. MICHAEL DUFFY,
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MR. SEAN KITTRELL
Assistant United States Attorney
P.O. Box 978
Charleston, SC 29402

For the Defendant: MR. DALE COBB
Belk Cobb Infinger
and Goldstein
P.O. Box 71121
Charleston, SC 29415

Court Reporter: Amy C. Diaz, RPR, CRR
P.O. Box 835
Charleston, SC 29402

Proceedings recorded by mechanical shorthand,
Transcript produced by computer-aided transcription.

1 THE COURT: If y'all are ready, call the case.

2 MR. KITTRELL: This is *United States of America vs.*
3 *Armond Wright*, Criminal Number 2:04-618. The defendant is
4 present represented by Mr. Dale Cobb, who is also present.
5 We're here for purposes of sentencing, having pled guilty on
6 the 3rd of June, 2009 pursuant to a plea agreement.

7 And I would note for the Court's edification that
8 paragraph 9 of that same plea agreement provides for a
9 recommended sentence of 10 years with the two counts
10 consecutive each to the other, as to each one. It's
11 therefore an uncontested sentencing and there are no
12 objections to the Presentence Report.

13 THE COURT: Thank you very much.

14 Mr. Cobb, would you and your client stand at the
15 podium, please?

16 Mr. Kittrell has appropriately put in the record
17 what the agreements have been. And for the record, I need to
18 go through what the Guidelines provide.

19 The total offense level is 21.

20 Criminal History Category is VI.

21 The defendant is not eligible for probation.

22 There is a term of imprisonment from 77 to 96
23 months, plus a consecutive 60-month term of imprisonment as
24 to Count 3.

25 However, as the defendant is a Career Offender

1 pursuant to the Guidelines under Section 4B1.1(c) (2) (B), the
2 Guideline range becomes 262 to 327 months.

3 Provisions of Guidelines 5G1.2(e) apply. The total
4 punishment is to be apportioned among the counts of
5 conviction with the 924(c) count imposed consecutively to any
6 other count of conviction.

7 There is a four to five-year supervised release.

8 A fine has not been calculated due to the
9 defendant's inability to pay a fine.

10 Restitution is not an issue in the case.

11 There is a \$300 special assessment fee.

12 Is everyone in agreement those would be the
13 Guidelines after the Plea Agreement and the Court's
14 concurrence in that?

15 MR. KITTRELL: Yes, sir.

16 MR. COBB: Yes, Your Honor.

17 THE COURT: Thank you.

18 That being the case, let me say that the Plea
19 Agreement was brought to me prior to the defendant pleading
20 guilty and I agreed with the Government and the defendant
21 that the 120-month sentence is appropriate; and therefore
22 that was incorporated in the Plea Agreement and we'll proceed
23 accordingly.

24 Before I hear from the Government and the defendant,
25 I would ask the clerk to make this Plea Agreement -- excuse

1 me -- this Presentence Report part of the record. And since
2 there are no objections to it, I'll adopt the factual
3 statements in the Presentence Report as the Court's finding
4 of fact for the purposes of this hearing.

5 MR. COBB: Your Honor, can I interrupt just a
6 second? Because Mr. Wright had asked for a suppression
7 hearing and the suppression hearing was held and ruled
8 against, the only objection that he has are to the offense
9 code in paragraph 10, 11 and 12, but that was taken care of
10 in the suppression hearing.

11 THE COURT: Thank you. Well, that's preserved for
12 the record.

13 MR. COBB: Yes, sir.

14 THE COURT: And anything else that was not objected
15 to I'll adopt. I've ruled on those. I'll adopt my rulings
16 for the purposes of this hearing.

17 The Presentence Report will remain under seal unless
18 it is needed for appellate purposes and the recommendation to
19 the Court will remain under seal until further order of the
20 Court.

21 Having so stated, does the Government have anything
22 else to add before I listen to Mr. Cobb and the defendant?

23 MR. KITTRELL: Just that the Government would not
24 object to any motion for variance from the Guidelines in
25 order to achieve the sentence in the Plea Agreement, given

1 the fact that it appears the defendant's history category is
2 overrepresented by the Guideline sentence.

3 THE COURT: Thank you very much.

4 Mr. Cobb, I'll be glad to hear from you, and if you
5 would incorporate into your remarks the reasons you think I
6 should agree to the variance, go ahead and add that, as well.

7 MR. COBB: Thank you, Your Honor.

8 If it please the Court? In court today with Armond
9 are his grandparents, who are seated in the second row over
10 there. They live in Georgetown and they, in essence, have
11 pretty much raised him and are here on his behalf.

12 As Mr. Kittrell indicated, the predicate offenses
13 that triggered the Career Offender status were possession of
14 marijuana cases. And each of the two predicate offenses
15 dealt with ounce amounts, not pounds, not kilos, not multiple
16 kilos, not multiple pounds, and in any ordinary setting,
17 probably should have or could have been dealt as possession
18 cases and held as misdemeanors. Be that as it may, for
19 whatever reason, his counsel had him plead to possession with
20 intent to distribute. Those provide the predicate amounts.

21 Unfortunately, as Mr. Kittrell indicated, that sort
22 of overstates what his risk is. The amount in controversy
23 here in this case was, again, a little over 2 ounces, 6 and 7
24 grams. So there is no question that by the report you see
25 that Mr. Wright has had a history of drug use. From a very

1 early age, he was involved with marijuana and with cocaine
2 and with alcohol. So a good bit of the problems that he has
3 had with the possession of drugs is the use of drugs, as
4 well.

5 There was no indication in this case whether or not
6 they had been watching him, whether or not he was dealing,
7 whether they knew that he was dealing, there was no
8 indication of that whatsoever. This was just an arbitrary
9 traffic stop and that they found this stuff thereafter.

10 So because of that, and because of his age, we think
11 that he is a prime candidate for a variance from the 262 to
12 327, and his previous counsel had negotiated with the
13 Government two 60-month sentences that was placed into the
14 Plea Agreement.

15 Your Honor, he has three children, sadly one of
16 which was born since, has not seen the third child. But
17 while he was out on bond prior to this arrest, he was working
18 at a number of different jobs as a roofer and in construction
19 and other jobs that he could get to help support -- he was
20 under a court order to pay child support. He was doing that.
21 He's concerned that he's in arrears and has been declared to
22 be in arrears because of his incarceration status, but of
23 course he has no way of dealing with that.

24 He's very much interested in continuing with drug
25 counseling that he started when he was in the Charleston

1 County Detention Center and the Georgetown County Detention
2 Center.

3 We would ask the Court to, in its judgment and
4 commitment form, recommend that he be committed -- and again,
5 this is a recommendation only, I know the BOP policy changes
6 from time to time as to who is eligible to go into the RDAP
7 program, but that he be admitted to go through the RDAP
8 program and continue his drug and alcohol counseling.

9 We would also ask Your Honor that he be permitted to
10 remain in South Carolina in one of the facilities that the
11 Bureau of Prisons has in South Carolina, the closest of which
12 would be Williamsburg, to his grandparents. His grandfather
13 has a bad heart condition and is not able to travel very far.
14 That would be helpful for purposes of visitation, but we
15 understand that it's up to his classification status and
16 space available. But we would ask that he be -- that you
17 recommend that he be permitted to serve his sentence in South
18 Carolina at an institution that has the RDAP program.

19 Your Honor, he has handed up through me to you a
20 letter concerning his past, what he is doing now, and what he
21 hopes to do in the future, but I think very succinctly says
22 that he is remorseful for his actions, he's concerned about
23 his drug use, he wants to get that behind him and he does
24 want to get out and help support his family.

25 THE COURT: Let me say for the record that I have

1 read the letter Mr. Wright sent to me through Mr. Cobb, and I
2 understand your arguments he puts forth and the clarity that
3 he brings to the subject in that letter, so thank you.

4 Mr. Wright, anything else you would like to add?

5 THE DEFENDANT: Your Honor, um, just to reiterate
6 some of the things that he was saying, that my lawyer was
7 saying, that this -- this case stems from me being a drug
8 user. And I know I have been one since an early age, as you
9 stated. And I know that's what led to my problem and me
10 being in the situation that I am today. And that from the
11 time of this incident, I had been drug free and then I sought
12 out help before and after being incarcerated. Not only that,
13 I have been crime free since that time, also. I haven't had
14 any other problems dealing with that or -- and that I would
15 have been a hard working, productive member of society and a
16 good and supportive father to my children.

17 And I'm just asking the Court for all leniency that
18 the Court will allow in my favor because I want to get back
19 out and I want to take care of my family and my
20 responsibilities as I have been doing. And I just wanted the
21 chance to continue that, sir. And I'm just asking for a
22 chance to be given me to allow me to do that, sir. And I
23 just -- I would appreciate any kind of leniency that Your
24 Honor would be able to give me.

25 And I thank you for your time and allowing me to

1 speak.

2 THE COURT: Thank you. And I thank your
3 grandparents for being here. I know it means a lot to you
4 that they are here to support you. I want them to understand
5 that it means a lot to me, as well, and I appreciate them
6 being here.

7 You know, it's the saddest thing in the world to see
8 somebody such as yourself, who is so well spoken and
9 represents his point of view as well as you do, and for whom
10 the light bulb didn't come on until much too late. It's
11 disturbing and frustrating to me to see people go through the
12 state system with repeated arrests and suspended sentences,
13 and then all of a sudden they end up in Federal Court and
14 they are facing massive amounts of time in prison. And at
15 that point, it's like running into a brick wall. And I'm
16 sure that's the way you felt when you saw the Guidelines in
17 this case and your listing as a Career Offender.

18 I'm going to grant the motion for variance and I'm
19 going to sentence you to the agreed-upon number of years
20 because I think that your record or the Guidelines overstates
21 your record. You had multiple offenses, as Mr. Cobb just
22 pointed out, they need not have resulted in the categories
23 that the Guidelines place you in.

24 Having said that, I would be remiss if I didn't tell
25 you and warn you that while 10 years is more time than you

1 want to spend, it is a considerable less amount of time that
2 the Guidelines call for. So the agreement of the U.S.
3 Attorney brings you down to where your Guidelines should have
4 been without the Career Offender status. But if you get in
5 trouble again when you are released, you will spend the rest
6 of your life in jail. I can't think of any other way to say
7 it than the key is in your hand. You are too smart, you are
8 too invested in your family to ever put yourself in that
9 position. But if you don't lick that drug program, then you
10 will spend the rest of your life in jail.

11 I'm going to ask the Bureau of Prisons to put you in
12 the most intensive drug treatment program it has. Having
13 read your letter, you are ready for that program, you want to
14 take advantage of it, but not just in that program, but later
15 when you are released. It will be a daily battle. It will
16 be something you can never again give in to. Peer pressure,
17 lack of funding, you name it, is no excuse for your getting
18 back involved with drugs. And I'm comfortable by the time
19 you leave prison you will have been clean for a long time,
20 but once you slip back, it's so easy to go all the way down.
21 So you need to think about that now and you need to think
22 about it in the future every day. And if you do, then I
23 think you will be available for your children, you will be
24 available for the mother, and hopefully that you will be a
25 productive, contributing citizen, and I think you can be.

1 MR. COBB: Your Honor, the only other thing we
2 wanted to make sure is he got credit from the pretrial
3 detention time. He has been in custody now for several
4 years.

5 THE COURT: It's been a long time. This case has
6 been continued for a number of reasons and the Presentence
7 Report was completed way back in --

8 MR. COBB: 2009.

9 THE COURT: -- 2009. So I'll ask and direct that
10 the time served would be credited and it will be.

11 MR. COBB: Thank you, Your Honor.

12 THE COURT: And I would ask that you place him in a
13 facility in South Carolina closest to his home.

14 Having considered the Guidelines and also the
15 sentencing factors and the agreement of the parties, it's the
16 judgment of Court the defendant, Armond Rashawn Wright, is
17 hereby committed to the custody of the Bureau of Prisons for
18 a term of 120 months. Consisting of 60 months as to Counts 1
19 and 2, those to run concurrently, and 60 months as to Count
20 3, that term to run consecutive to the other term.

21 MR. COBB: Your Honor, he only pled guilty to Counts
22 1 and 3.

23 THE CLERK: 2 and 3.

24 MR. COBB: Excuse me, 2 and 3.

25 THE COURT: 2 and 3, I'm sorry.

1 MR. PARADIS: Your Honor, the Presentence Report
2 was done as a consent, and I think the recommendation was
3 done prior to his guilty plea and that's the reason that --

4 MR. COBB: He pled to an 841 and a 944.

5 THE COURT: Well, thank you. The sentence is
6 amended to reflect 60 months as to the first count and 60
7 months consecutive as to Count 3.

8 MR. COBB: Thank you, Your Honor.

9 THE COURT: Thank you for correcting me.

10 A fine is waived.

11 There is a \$300 special assessment fee, which is due
12 beginning immediately.

13 Upon his release from imprisonment, he'll be placed
14 on supervised release for a term of five years as to both
15 counts to run concurrently.

16 Within 72 hours of his release from the custody of
17 the Bureau of Prisons, the defendant will report in person to
18 the Probation Office in the district to which he is released.
19 And while on supervised release, he must comply with the
20 mandatory and standard conditions of supervision as outlined
21 in Title 18 of the U.S. Code, Section 3583(d), also the
22 following special conditions:

23 The defendant shall participate in a program of
24 testing and treatment for substance abuse as approved by the
25 probation officer until such time as he's released from the

1 program by the probation officer.

2 He also shall enroll in and complete an educational
3 program as directed by the probation officer with the
4 objective of obtaining his GED, unless he's already obtained
5 that during his period of incarceration.

6 Mr. Wright, I'm comfortable you will accomplish that
7 while you are incarcerated and I would also encourage you to
8 take advantage of any vocational training made available to
9 you during that time, so when you get out, you will be able
10 to secure good employment.

11 Unless otherwise gainfully employed, the defendant
12 will complete a vocational training program while on
13 supervised release with the objective of learning and
14 obtaining lawful employment as directed and approved by the
15 U.S. Probation Officer.

16 Does either the Government or the defendant have any
17 objections to the form of the sentence?

18 MR. KITTRELL: No, sir. The Government would move
19 to dismiss Count 1 of the Indictment pursuant to paragraph 4
20 of the Plea Agreement.

21 THE COURT: I grant that motion.

22 MR. COBB: Thank you, Your Honor.

23 THE COURT: Any objections, Mr. Cobb?

24 MR. COBB: No, Your Honor.

25 THE COURT: Mr. Wright, a defendant has a right to

1 appeal his sentence. If you wish to appeal this sentence,
2 any Notice of Appeal must be filed within 10 days after the
3 judgment is entered, and Mr. Cobb will tell you when that is.
4 It will just be a matter of a couple days at most. And if
5 you so request, the Clerk of Court will prepare and file a
6 Notice of Appeal on your behalf. You understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Good luck to you, sir.

9 MR. COBB: The only other thing is his grandparents
10 are here from Georgetown, could he have a few minutes with
11 them downstairs?

12 THE COURT: I would ask the marshals to arrange
13 that. Thank you very much.

14 MR. COBB: Thank you, Your Honor.

15 THE COURT: Thank y'all.

16 *****

17
18 I certify that the foregoing is a correct transcript from the
19 record of proceedings in the above-titled matter.
20
21
22
23 -----
24

25 Amy C. Diaz, RPR, CRR

October 24, 2013

1 S/ Amy Diaz
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25